

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 306 OF 1996

Union of India ..Appellants

versus

M/s. Devichand Kupaji ..Respondents

Mr. A. N. Samant for the Appellants.

None for the Respondents.

CORAM: D.G.DESHPANDE, J.

DATED: 4TH MAY, 2005

ORAL ORDER :

1. Heard Mr. Samant for the Appellants.

Nobody is present for the Respondents.

2. This Appeal is filed by the Union of India - Appellants against the order of the RACT, Mumbai.

3. Mr. Samant raised only two contentions. Firstly, according to him the RR issued by the Railway was "said to contain". The second contention was that the Tribunal awarded interest at the rate of 12% per annum and according to him it should be 9% per annum in view of the Judgment of this Court

reported in 2005(1) Mh.L.J. 165 Maharashtra State Electricity Board vs. Union of India. It was a claim against the Railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed same judgment earlier, therefore the rate of interest is required to be reduced to 9% per annum. Therefore, he contended that firstly the appeal should be allowed so far as claim on merits is concerned, or alternatively interest rate should be reduced.

4. So far as contention of Mr. Samant of RR with the endorsement "said to contain", the same is required to be rejected.

5. Two consignments one containing 138 bags of wheat and other containing 139 bags of wheat were booked under two Railway Receipts, these consignments were clubbed and loaded in BC Wagon No. SC 26968. The consignment reached after 78 days. On arrival 60 bags of wheat were found short. However the Station Master refused to issue shortage certificate as per the rules. The Respondents therefore filed claim for sum of Rs.18,000/- towards the price of 60 bags of wheat, short delivered. In written statement appellants denied allegation about shortage etc. The

Tribunal framed as many as 11 issues but the issue regarding RR "said to contain" was not at all framed. The Tribunal found that there was total negligence of the railway. Therefore, in the circumstances the defence of "said to contain" is not available to the appellants.

6. So far as interest part is concerned, contention of Mr. Samant is required to be accepted, in view of the judgment of this court, as stated above.

7. In the result, I pass the following order:

ORDER

- . The appeal is partly allowed.
- . The principal amount awarded will carry interest at the rate of 9% per annum from the date of application till realisation or till date of payment or deposit with proportionate costs.
- . Amount that is found in excess after the aforesaid calculations shall be returned to the appellants. Respondents will be permitted to withdraw the amount as per the calculations.
- . No order as to costs.

4.5.2005

(D.G. DESHPANDE, J.)